

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET #05-11658-JLT

CHRISTOPHER MANGO)
Plaintiff)
)
)
vs.)
)
)
PROVINCETOWN POLICE DEPT ET AL,)
Defendant)
)

THE ATTORNEY GENERAL TOM REILLY'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO FED. R.
CIV. PRO. 12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION

Defendant, Attorney General Tom Reilly (hereinafter, "Attorney General") moves to dismiss plaintiff's complaint for lack of jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), as the claim for monetary damages against the Attorney General in his official capacity is barred pursuant to the Eleventh Amendment of the U.S. Constitution¹. Kentucky v. Graham, 473 U.S. 159, 165 (1985). Additionally, to the extent plaintiff states a claim against the Attorney General in his official capacity under 42 U.S.C. § 1983, it must be dismissed because the Attorney General is not a "person" who may be held liable within the meaning of that section.

For these reasons, the Attorney General requests that the Court dismiss the complaint as against him. A memorandum of law is submitted in support of this motion.

¹ The Commonwealth only concedes representation of the Attorney General in his official capacity as the Attorney General in his individual capacity was never served pursuant to Fed. Rule. Civ. Pro. 4 (e).

Respectfully submitted,
THOMAS F. REILLY
ATTORNEY GENERAL

By his attorney,

/s/ Alison L. Andelman

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Dated: January 9, 2006

CERTIFICATE OF SERVICE

I, Alison L. Andelman, Assistant Attorney General, hereby certify that I have this day, January 9, 2006, served the foregoing document upon the parties, by mailing a copy, first class, postage prepaid to: Mr. Jay Patrick Mellen, 128 Main Street, Building 2, Apt. #4 Groton, MA 01450; Jonathan M. Silverstein, Esq., Kopelman and Paige, P.C. Town Counsel, 31 St. James Avenue, Boston, MA 02116.

/s/ Alison L. Andelman

Alison L. Andelman